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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.J., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

SARAH H.,

Defendant and Appellant.

D056066

(Super. Ct. No. J516825)

APPEAL from a judgment of the Superior Court of San Diego County, Laura J. Birkmeyer, Judge. Affirmed.

Sarah H. appeals the judgment terminating her parental rights over her daughter A.J. Sarah contends the juvenile court erred by declining to apply the beneficial relationship exception to termination. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)¹ We affirm.

¹ Statutory references are to the Welfare and Institutions Code.

BACKGROUND

In August 2007 the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for two-year-old A.J. The petition alleged Sarah and A.J.'s father, Andre J., admitted daily use of cocaine and marijuana. A.J., who tested positive for amphetamines/methamphetamines, was detained in a foster home. In September the court entered a true finding on the petition and ordered A.J. placed in foster care. The section 366.26 hearing took place in August 2009. A.J. remained in the same foster home throughout the case. Her foster parent wishes to adopt her.

DISCUSSION

If a dependent child is adoptable,² the juvenile court must terminate parental rights at the section 366.26 hearing unless the parent proves the existence of a statutory exception. (§ 366.26, subd. (c)(1); *In re Helen W.* (2007) 150 Cal.App.4th 71, 80.) One such exception exists if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A beneficial relationship is one that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The existence of this relationship is determined by factors including "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs" (*Id.* at

² Sarah does not contest the juvenile court's finding that A.J. was adoptable.

p. 576.) Sarah had the burden of proving the statutory exception. (*In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1372-1373.) We apply the substantial evidence standard of review. (*In re Autumn H.*, *supra*, at pp. 576-577.)

Regarding the visitation prong of the exception, the juvenile court observed that Sarah maintained "just the very bare minimum of regular visitation." The record supports this conclusion. Sarah's visits were supervised until August 2008, and she visited regularly until September. In September the supervision requirement was reimposed because Sarah had a positive drug test, was not complying with treatment, was late returning A.J. after a visit and had roommates who presented a risk to A.J. Sarah did not visit A.J. from late September 2008 until early January 2009. In January Sarah missed two visits. Between September 2008 and February 2009 Sarah visited just 14 times, although she was offered 30 visits. In March 2009 she missed another visit. In April and May there were six visits. Between June and August Sarah had five visits and missed three visits with no prior notice, later claiming car problems.

Even assuming Sarah met her burden of showing regular visitation and contact, she failed on the second prong, the existence of a beneficial relationship. She now cites only evidence supporting her claim the beneficial relationship exception applies and fails to reference evidence that supports the judgment. We examine the evidence in the light most favorable to the judgment. (*In re Angelica P.* (1981) 28 Cal.3d 908, 924.)

At the time of the section 366.26 hearing, A.J. was nearly five years old. She had been removed from Sarah's custody before her third birthday and had lived with her foster parent for nearly two years. A.J. was thriving in her foster home, where she had

found stability and permanence. While A.J. and Sarah clearly had a bond, A.J.'s primary bond was with her foster parent. A.J. sometimes cried when she left her foster parent to visit Sarah. Sarah and A.J. were affectionate with one another during visits, and Sarah was generally appropriate.³ When visits ended, however, A.J. usually showed no distress and was excited to go home to her foster parent.⁴

Sarah relies on *In re S.B.* (2008) 164 Cal.App.4th 289, in which this court concluded the juvenile court erred by declining to apply the beneficial relationship exception. (*Id.* at p. 301.) That case is distinguishable. There, the child was five years old (*id.* at pp. 293, 295), and the appellant father had been her primary caretaker for three years (*id.* at p. 298). The child continued to display a strong attachment to him after her removal (*id.* at pp. 298-301), and they "had an emotionally significant relationship." (*Id.* at p. 298.) The father fully complied with his case plan, visited consistently and made the child his top priority. (*Id.* at pp. 293-294, 298-300.) Sarah, on the other hand, failed to comply with the drug treatment portion of her plan, stopped visiting for a period of time

³ During the early stages of the case, when Sarah and Andre visited together, they talked with each other and had minor disagreements when they should have been tending to A.J. At one visit, Sarah took the foster parent's cell phone and used it without permission. During some visits, Sarah answered calls on her own cell phone. Sarah brought A.J. an excessive number of gifts until asked to stop. Sarah confused A.J. by bringing a dog to a visit and telling A.J. it was A.J.'s dog, and by telling A.J. she was going to be a sister because Sarah was pregnant.

⁴ On one occasion A.J. showed minor disappointment when a visit ended. On another occasion, she asked to leave a visit early.

and was involved in two instances of domestic violence during the course of this case.⁵

Sarah failed to make A.J. her priority.

Although Sarah and A.J. had a friendly relationship, it was not parental. "A friendly relationship . . . 'is simply not enough to outweigh the sense of security and belonging an adoptive home would provide.' " (*In re Jason J.* (2009) 175 Cal.App.4th 922, 938, quoting *In re Helen W.*, *supra*, 150 Cal.App.4th at p. 81.) A.J. did not have "a substantial, positive emotional attachment" to Sarah such that A.J. would be greatly harmed by the severance of their relationship. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Substantial evidence supports the juvenile court's finding the beneficial relationship exception did not apply.

DISPOSITION

The judgment is affirmed.

HALLER, Acting P. J.

WE CONCUR:

McINTYRE, J.

IRION, J.

⁵ The first incident of violence was with Andre in December 2008. The second incident was in May 2009 with a new partner.